

§ 81.83

24 CFR Subtitle A (4-1-04 Edition)

(v) The effective date of the order if the GSE does not contest the matter.

(2) *Administrative Law Judge.* A HUD Administrative Law Judge (ALJ) shall preside over any hearing conducted under this section. The hearing shall be conducted in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with 24 CFR part 26, subpart B.

(3) *Issuance of order.* If the GSE consents to the issuance of the order or the ALJ finds, based on the hearing record, that a preponderance of the evidence established the conduct specified in the notice of charges, the ALJ may issue and serve upon the GSE an order requiring the GSE to:

(i) Submit a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(ii) Comply with a housing plan; or

(iii) Provide the information required under subpart E of this part.

(4) *Effective date.* An order under this section shall be effective as provided in 12 U.S.C. 4581(c) and § 81.84(m).

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50218, Sept. 24, 1996]

§ 81.83 Civil money penalties.

(a) *Imposition.* The Secretary may impose a civil money penalty on a GSE that has failed:

(1) To submit, within the time prescribed in § 81.22, a housing plan that substantially complies with 12 U.S.C. 4566(c), as implemented by § 81.22;

(2) To make a good-faith effort to comply with a housing plan submitted and approved by the Secretary; or

(3) To submit any of the information required under sections 309(m) or (n) of the Fannie Mae Charter Act, sections 307(e) or (f) of the Freddie Mac Act, or subpart E of this part.

(b) *Amount of penalty.* The amount of the penalty shall not exceed:

(1) For any failure described in paragraph (a)(1) of this section, \$30,000 for each day that the failure occurs; and

(2) For any failure described in paragraphs (a)(2) or (a)(3) of this section, \$11,000 for each day that the failure occurs.

(c) *Factors in determining amount of penalty.* In determining the amount of a penalty under this section, the Sec-

retary shall consider the factors in 12 U.S.C. 4585(c)(2) including the public interest.

(d) *Procedures—(1) Notice of Intent.* The Secretary shall notify the GSE in writing of the Secretary's determination to impose a civil money penalty by issuing a Notice of Intent to Impose Civil Money Penalties ("Notice of Intent"). The Notice of Intent shall provide:

(i) A concise statement of the facts constituting the alleged misconduct;

(ii) The amount of the civil money penalty;

(iii) Notice of the GSE's right to a hearing on the record;

(iv) The procedures to follow to obtain a hearing;

(v) A statement of the consequences of failing to request a hearing; and

(vi) The date the penalty shall be due unless the GSE contests the matter.

(2) To appeal the Secretary's decision to impose a civil money penalty, the GSE shall, within 20 days of service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent.

(3) *Administrative law judge.* A HUD ALJ shall preside over any hearing conducted under this section, in accordance with § 81.84 and, to the extent the provisions are not inconsistent with any of the procedures in this part or FHEFSSA, with 24 CFR part 26, subpart B.

(4) *Issuance of order.* If the GSE consents to the issuance of the order or the ALJ finds, on the hearing record, that a preponderance of the evidence establishes the conduct specified in the notice of charges, the ALJ may issue an order imposing a civil money penalty.

(5) *Consultation with the Director.* In the Secretary's discretion, the Director of OFHEO may be requested to review any Notice of Intent, determination, order, or interlocutory ruling arising from a hearing.

(e) *Action to collect penalty.* The Secretary may request the Attorney General of the United States to bring an

action to collect the penalty, in accordance with 12 U.S.C. 4585(d). Interest on, and other charges for, any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

(f) *Settlement by Secretary.* The Secretary may compromise, modify, or remit any civil money penalty that may be, or has been, imposed under this section.

[60 FR 61888, Dec. 1, 1995, as amended at 61 FR 50218, Sept. 24, 1996; 68 FR 12788, Mar. 17, 2003]

§ 81.84 Hearings.

(a) *Applicability.* The hearing procedures in this section apply to hearings on the record to review cease-and-desist orders, civil money penalties, and new programs disapproved based upon a determination by the Secretary that such programs are not in the public interest, in accordance with 12 U.S.C. 4542(c)(4)(B).

(b) *Hearing requirements.* (1) Hearings shall be held in the District of Columbia.

(2) Hearings shall be conducted by a HUD ALJ authorized to conduct proceedings under 24 CFR part 26, subpart B.

(c) *Timing.* Unless an earlier or later date is requested by a GSE and the request is granted by the ALJ, a hearing shall be fixed for a date not earlier than 30 days, nor later than 60 days, after:

(1) Service of the notice of charges under § 81.82;

(2) Service of the Notice of Intent to Impose Civil Money Penalty(ies) under § 81.83; or

(3) Filing of a request for a hearing under § 81.54(b).

(d) *Procedure.* Hearings shall be conducted in accordance with the procedures set forth in 24 CFR part 26, subpart B to the extent that such provisions are not inconsistent with any of the procedures in this part or FHEFSSA.

(e) *Service*—(1) *To GSE.* Any service required or authorized to be made by the Secretary under this subpart G may be made to the Chief Executive Officer of a GSE or any other representative as the GSE may designate in writing to the Secretary.

(2) *How service may be made.* A serving party shall use one or more of the following methods of service:

(i) Personal service;

(ii) Delivering the papers to a reliable commercial courier service, overnight delivery service, or the U.S. Post Office for Express Mail Delivery; or

(iii) Transmission by electronic media, only if the parties mutually agree. The serving party shall mail an original of the filing after any proper service using electronic media.

(f) *Subpoena authority*—(1) *General.* In the course of or in connection with any hearing, the Secretary and the ALJ shall have the authority to:

(i) Administer oaths and affirmations;

(ii) Take and preserve testimony under oath;

(iii) Issue subpoenas and subpoenas duces tecum; and

(iv) Revoke, quash, or modify subpoenas and subpoenas duces tecum issued under this paragraph (f).

(2) *Witnesses and documents.* The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State. A witness may be required to appear, and a document may be required to be produced, at:

(i) The hearing; and

(ii) Any place that is designated for attendance at a deposition or production of a document under this section.

(3) *Enforcement.* In accordance with 12 U.S.C. 4588(c), the Secretary may request the Attorney General of the United States to enforce any subpoena or subpoena duces tecum issued pursuant to this section. If a subpoenaed person fails to comply with all or any portion of a subpoena issued pursuant to this paragraph (f), the subpoenaing party or any other aggrieved person may petition the Secretary to seek enforcement of the subpoena. A party's petition to the Secretary for enforcement of a subpoena in no way limits the sanctions that may be imposed by the ALJ on a party who fails to comply with a subpoena issued under this paragraph (f).

(4) *Fees and expenses.* Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of